

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 39169
REDACTED,)	
)	
Petitioner.)	DECISION
_____)	

On October 9, 2014, the staff of the Sales, Use and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (Notice) to Redacted (Petitioner), proposing sales tax, use tax, penalty, and interest for the period November 1, 2010, through October 31, 2013, in the total amount of \$33,963.

On December 8, 2014, the Petitioner filed a timely appeal and petition for redetermination of the Notice.

At the Petitioner's request, the Commission held an informal hearing on June 11, 2015. Present at the hearing Redacted The Commission is fully advised of the contents of the audit file, as well as information obtained at the hearing and thereafter, and hereby issues its decision upholding the audit findings.

Background and Audit Findings

The Petitioner Redacted All of these Redacted The Petitioner Redacted

The Bureau conducted a routine comprehensive audit of the Petitioner's business for the purpose of determining compliance with Idaho sales and use tax law. After its review, the Bureau asserted errors in non-taxed sales, the sales tax reconciliation, ordinary purchases, fixed asset additions, and the purchase of materials incorporated into real property.

The Petitioner agrees with the Bureau's imposition of sales and use tax in all respects, with the exception of the imposition of sales tax on the separately stated charges for Redacted

The Bureau determined that the Petitioner Redacted are part of the sales price subject to sales tax.

Petitioner's Protest and Analysis

The Petitioner disagreed with the Bureau's determination arguing that Redacted The Petitioner refers to IDAPA 35.01.02.27.08 in the protest letter quoting, "[t]he transfer of title, possession, or use for a consideration of Redacted is not subject to sales tax. Redacted is specified, Redacted at the specific request of a client to meet a particular need." The Petitioner included another section of IDAPA 35.01.02.27.08 which states that "[t]he term [Redacted] includes those services that are represented by separately stated and identified charges for modification to existing Redacted which are made to the special order of the customer, even though the sales, lease, or license of the existing Redacted remains taxable."

Although it is not specifically stated in the protest letter, it would appear that the Petitioner included these references to suggest that the Redacted being done during the Redacted and as such the labor associated with that Redacted should not be included in the price subject to sales tax as long as it is separately stated.

To support its stance that the Redacted the Petitioner provided Redacted The Petitioner included in its protest letter the argument that Redacted rendered incidental to a retail sales are exempt if the charge for the service is separately stated.

Relevant Tax Code and Analysis

Idaho imposes a tax on the sale of tangible personal property:

Sale. -- (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter (Idaho Code § 63-3612).

The Sales Tax Act defines “sales price” excerpted in relevant part below:

Sales price. -- (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold....
2. The cost of materials used, *labor or service cost, losses, or any other expense* (Idaho Code § 63-3613, emphasis added).

The foregoing includes “services agreed to be rendered as part of the sale” as well as labor, service cost, and “any other expense” in the amount subject to tax. By including these words, the legislature expressly indicated that some services were intended to be part of the sales price subject to tax even if the charge for such services is stated separately from the charge for the property.

The Commission has promulgated IDAPA 35.01.02.43.02 which also supports the statute:

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term “sales price” is defined by Section 63-3613, Idaho Code, to include “services to be rendered as a part of the sale.” The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price.

The Commission reviewed the workpapers prepared by the Bureau and confirmed the Petitioner did separately state Redacted charges and, the Bureau had determined that these charges were for the act of Redacted charges were not held subject to sales tax by the Bureau.

The Commission acknowledges that the Redacted done during Redacted but does not agree with the Petitioner Redacted is being written. IDAPA 35.01.02.27.08 states that “[e]xamples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.” In the Commission’s view, the Petitioner Redacted

In referring to Redacted work, the Petitioner is not creating new Redacted but working within the parameters of an existing Redacted

The Commission agrees with the Bureau's determination that Redacted should be included in the sales price subject to sales tax.

The Petitioner did not provide evidence adequate to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the Notice. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the Petitioner to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

The Commission finds the deficiency prepared by the Bureau to be a reasonably accurate representation of the Petitioner's sales and use tax liability for the period November 1, 2010, through October 31, 2013.

The Bureau added interest and penalty to the sales and use tax deficiency. The Commission reviewed those additions, found both to be appropriate per Idaho Code §§ 63-3045 and 63-3046, and has updated interest accordingly. Interest is calculated through March 31, 2016, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice of Deficiency Determination dated October 9, 2014, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED that the Petitioner pay the following tax, penalty and interest:

TAX	PENALTY	INTEREST	TOTAL
\$29,612	\$1,481	\$4,419	\$35,512

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the Petitioner's right to appeal this decision is included with this decision.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

Redacted

Receipt No.